THE PRESENT STATUS OF WORKMEN'S COMPENSATION IN THE UNITED STATES

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The principle that the pecuniary loss incident to bodily injuries sustained in the course of employment should be borne by the industry, which is to say by the community at large—this principle is now so universally accepted that "to assert the contrary is to set the face against the enlightened opinion of mankind." The responsibility of industry for work injuries is asserted in the statute law of all industrial nations. The merits of this juridical doctrine are no longer a subject of dispute. Present-day debate turns only upon the scope and scale of industrial responsibility and upon administrative details.

But it is one thing to assert a legal principle, another to give it practical effect. The present status of Workmen's Compensation in the United States is to be ascertained, not by a count of statutes, but by a comparison of the benefits provided with the pecuniary losses which those benefits purport to cover. A useful review of American compensation laws at the present day will deal primarily with the question of adequacy, of consonance with the principle which these laws profess to embody.

Territorially the American compensation system is nearly universal. Only the District of Columbia and six southern states[1] still maintain the common law of unhallowed memory. Industrially the system is less comprehensive. Most of the states exclude agriculture and domestic service, many exempt establishments which regularly employ fewer than four, five, or even ten persons; some few exclude a particular extra-hazardous industry, such as mining or logging. Railway and marine workers engaged in interstate or foreign commerce are, in the absence of congressional legislation, excluded as being without the jurisdiction of the several states. Summing up all these exclusions it is perhaps within the mark to say that the American compensation system covers from two-thirds to three-fourths of the total number of wage workers.[2] Even within these territorial and industrial limits the laws are further restricted by the very general exclusion of

[1]Missouri is the only state of much industrial importance without a compensation act. The others are Arkansas, Florida, Mississippi, North Carolina, and South Carolina.

[2]Only a very laborious calculation from the census data for each state would give an approximate estimate of the actual proportion of wage workers embraced by the several compensation laws.

occupational diseases. In respect to scope, then, much new legislation is needed to extend the principle of compensation to all work injuries.

With respect to scale of benefits the showing is much less satisfactory. The primary purposes of a compensation act are three: to encourage the prevention of work injuries as much as possible by affording a direct incentive to such prevention, to restore the earning capacity of those injured workmen who are capable of rehabilitation; and to shift the pecuniary cost of work injuries from the immediate victims and their dependents to the community at large. Economic relief to the sufferers is not merely the most urgent of these objects, but is the key to both the others. Adequate compensation for fatal and permanent injuries will do more than all other legislation to promote industrial safety and to encourage genuine rehabilitation. Yet it is precisely in respect to these serious injuries that American compensation acts are most deficient.

Pensions to dependents in case of death are usually a small fraction of the breadwinner's earnings—from 10 to 50 per cent[3] —payable for a limited term. In many states the total death benefit is $3000 or $4000, payable in weekly installments over a period of six, eight, or ten years, and is the same to a childless widow as to a larger family. In other states the widow receives a small pension—$5 to $10 weekly—and has an additional allowance for each child under a specified age. Five states continue the widow's pension during widowhood, in other states her allowance terminates in the sixth, eighth, or tenth year, irrespective of age or earning capacity. By a singular perversion of common sense, the allowance to an orphaned child is everywhere less than the pension to an able-bodied widow. Payments to or on account of a child cease at the age of sixteen in many states, at eighteen in the most progressive jurisdictions, and at fourteen in some of the former slave-holding states. In still other states—a majority of all indeed—payments cease at the end of a fixed term, irrespective of the number, ages, or economic status of the children. In no state is the rate or the total amount of compensation at all sufficient either to replace the lost earnings of the deceased breadwinner or to provide reasonable maintenance and education for the widow and children.

[3]This statement refers to the *actual,* which is invariably less than the *nominal,* percentage of wages.

For total disability the compensation is nominally 50, 60, 65, or 66 ⅔ per cent of wages.[4] The actual percentage of wage is, however, very much less than the statutes seem to promise, for the weekly payments are everywhere subject to fixed maxima: $12, $15, or $20.[5] In Pennsylvania, e. g., where the nominal rate is 60 per cent of earnings, the actual rate is from 25 per cent in high-paid to 50 per cent in low-paid occupations, the general average in 1920 being 40 per cent of weekly earnings. The proportion of compensation to wage loss is still less than the ratio of weekly compensation to weekly wage. The "waiting period" seriously reduces the compensation for temporary disability while time limits have a yet more serious effect in the case of permanent disability. The waiting period, during which no compensation is payable, is most often one week,[6] in a number of states ten days or two weeks, in a few jurisdictions less than one week. Under a two week waiting period with a maximum of $15 weekly, a skilled workman receives a total compensation of $30 for a month's disability against a wage loss of at least $150. Upon an average of all temporary disabilities under the Pennsylvania Law, e. g., compensation does not exceed 25 per cent of wage loss.[7] Even this low ratio takes no account of disabilities of less than ten days' duration.

Compensation for permanent disability is subject to the limits already mentioned as to weekly rate, and usually also to a still less justifiable limit in point of time. Only twelve states[8] provide life pensions even for permanent total disability. In most states the utterly helpless victim of a work injury who has the misfortune to survive for ten years is then relegated to the almshouse. Still more curious are the schedules of specific indemnity for enumerated permanent injuries—schedules expressed, not in percentages of wages or of earning capacity, but in weeks of compensation. Our legislatures have solemnly enacted, if not precisely

[4]It is 66 2-3% in all states, 65% in 5 states, 60% in 10 states, 50% in 15 states.

[5]Ten dollars in 3 states, $11 in one, $12 in 12, $12 to $15 in 12, $20 or more in 6.

[6]One week in 25 states, ten days in 7, two weeks in 8, less than one week in 3.

[7]See *Statistical Analysis* issued by the Pennsylvania Compensation Rating Bureau (annual). Other statements as to Pennsylvania experience are based on unpublished records and upon the writer's personal knowledge.

[8]California, Colorado, Montana, Nebraska, Nevada, New York, North Dakota, Ohio, Oregon, Utah, Washington and West Virginia. Wisconsin has a variable period depending upon the age of the injured. It is noteworthy that only two industrially important states provide life pensions.

that a lost hand shall grow again in 150 weeks, at least that compensation therefor shall terminate at the end of that time. Such provisos disregard the essential feature of Workmen's Compensation: that there shall be a direct relationship between indemnity and wage loss.

Still less excusable is the well-nigh universal failure to provide adequate medical, surgical, and hospital care, to say nothing of such re-training as might benefit the crippled worker. On every social ground it is highly expedient that those who are incapacitated by accident or disease should be restored as speedily and completely as may be to industrial usefulness. Yet most states require medical care only for thirty, sixty, or ninety days after the injury, and only within a low monetary limit—$100 or $200. Whatsoever is more than this cometh of charity, or from the shrewd calculation that it may be cheaper to operate than to pay compensation for a permanent disability. Even this last incentive is less effective than it ought to be, because of the limited compensation for permanent injuries. Little wonder that no systematic effort has anywhere been made to rehabilitate industrial cripples. Employers have no incentive so to do.

Taken on the whole, compensation in the Uinted States probably does not exceed one-fourth of the pecuniary cost of those injuries which the compensation laws profess to cover. Having regard to the excluded classes of wage workers and the excluded categories of injury, it is well within the facts to say that four-fifths of the direct economic loss incident to work injuries still falls upon the individual victims and their families. We have given much lip service to the principle of industrial responsibility but our practice has fallen far short of our professions.

By the same token, prevention is much short of what would be attained under an adequate scale of benefits. In Pennsylvania alone there have been sixteen thousand deaths and more than one million disabling injuries by industrial accident within the space of six years. That a vast number of these accidents were preventable is known to every engineer. But effective safety engineering costs much money. Coal mine entries must be widened, electric voltages reduced, mine cars equipped with brakes, road bed and rolling stock improved, more and better timber set, more inspections made, stricter discipline enforced. To reduce the fatality rate from three to two per million tons of coal is perfectly feasible, but when the saving represents only one-quarter cent

per ton it does not pay. If the average cost per death were raised from $2500 to $10,000 much would become practical which is now deemed visionary.

Something less than full compensation for temporary injuries is justified on social grounds. Human nature being what it is, much malingering would doubtless result from any attempt to pay full wages during disability. Probably two-thirds of actual wage-loss—the nominal percentage specified in many compensation acts—is not unreasonable. So, too, a moderate waiting period is justifiable on grounds of administrative cost. But there is no economic justification for a maximum rate or a maximum amount less than two-thirds of actual wage-loss, nor for a waiting period of more than one week, nor for the exclusion of occupational disease. Still less is there any warrant in economics or equity for cutting off compensation before disability has ceased or dependency terminated. Least of all can the community afford to deny full therapeutic aid to the victims of industrial injury.

The excuse advanced for a scale of benefits confessedly inadequate—that industry cannot bear the burden—is founded on misapprehension. Compensation equal to two-thirds of total wage-loss plus full therapeutic care for all industrial injuries would certainly not cost more than ten cents the ton of bituminous coal nor add more than one cent to the cost of a ten dollar pair of shoes. For most manufactured commodities full compensation would not exceed one-half of one per cent of manufacturer's price. Even in building construction the most liberal scale of benefits ever proposed would scarcely equal two per cent of contractor's price—certainly much less than the architect's fees. If adequate compensation would be a burden scarcely felt by consumers, still less would it place employers at a competitive disadvantage. Other items of entrepreneur's costs bulk so much larger and are so extremely variable that it may be doubted whether the cost of compensating work injuries ever influenced the location of a business enterprise or the decision of an entrepreneur to expand or restrict the scale of his operations. The meagre and widely varying benefits provided by American compensation laws are traceable to a very different consideration: the relative pull exercised by organized labor, disinterested reformers, and employers' associations.

For the administration of their Workmen's Compensation Acts most states have created special boards or commissions charged

with the supervision of claim settlements, the adjudication of disputed claims, and the duty of seeing to it that employers provide insurance or other security for the payment of future installments of compensation when and as accrued. In comparison with our law courts these commissions are models of promptness and efficiency. The number of disputed claims is small, appeals are few, and the statutes, on the whole, are liberally construed. Probably no branch of administration in this country is better conducted.

There remain, however, grave shortcomings. The commissioners are political appointees, frequently changed, drawn in large part from the lower grades of practising attorneys and imbued with an incurable predilection for common-law procedure. The technical and clerical staffs are commonly also political and always inadequate. The result is great laxity in the supervision of settlements by agreement, with much needless technicality and avoidable delay in adjudication. There are no statistics of claim settlement, but such test studies as have been made serve to show that first payments in fatal cases are unreasonably delayed and that, in case of temporary disability, the victim commonly receives nothing at all until his disability has ceased and the most urgent need has passed.[9] Private insurance companies, state insurance funds, and non-insured employers appear to be equally and all but universally remiss in this respect. The point deserves strong emphasis, for to give relief when relief is needed is the very essence of the compensation scheme.

Short changing—the settlement of claims for less than the statute provides—is especially prevalent in those states which have retained court administration. Under commission administration there are few such complaints except in respect to those cases of permanent disability not covered by specific indemnity schedules. Compensation for indubitable permanent total disability may, in most states, be suspended for weeks or months on the mere allegation of the employer or insurance carrier that the claimant is able to do "light work," and the hapless victim is then put to the trouble, delay, and expense of proving that he is still disabled. In cases of partial disability, many commissions hold

[9]Some very illuminating test studies have been made by the Industrial Accident Board of Illinois and by the Compensation Bureau of Pennsylvania. See also Carl Hookstadt in (U. S.) *Monthly Labor Review,* November, 1920.

The *average* interval between accident and first payment *exceeds* the *average duration* of disability, alike in Illinois, Ohio, and Pennsylvania.

the curious view that the claimant must procure employment and establish a difference between his present and former wage rate before compensation can be fixed. If employment is slack no loss of earnings can be proved and no compensation is paid. If the handicapped worker finds employment, it is usually casual and at varying rates of pay. His compensation, consequently, varies from job to job and may range in a single year from fifty cents to twelve dollars a week, with frequent suspensions.[10] Such anomalies are due in part to faulty procedure, to over-insistence upon the technicalities of legal "proof," and to a too-restricted definition of "loss of earnings" in the statutes. Still more serious is the lack of adequate facilities for impartial, first-hand investigation. The doctrine of self-help still has a strong hold upon legislatures and administrators. The commissions do not go out to find the facts: they wait for the claimant to present a petition and produce evidence. All of which means that the claimant must hire an attorney and procure medical testimony at his own charges.

After the award is rendered, little effort is made to see that its terms are carried out. Compensation payments for death and permanent disability run over long terms, even to life pensions. Payments during a given year on account of current injuries are but a fraction of the ultimate payments and this fraction is the smaller in proportion as the scale of benefits approaches adequacy. Yet, in most states, any employer—corporation, individual, or copartnership—who can make a fair showing of paper assets is lightly permitted to assume these long-continuing obligations. Insurance companies are somewhat better supervised but the standard of solvency is low, compensation reserves are not segregated from other liabilities, and the false etiquette of interstate comity hampers the few insurance departments which might otherwise enforce a higher standard.

The paucity of statistical records is perhaps a small matter in comparison with prompt and full payment of claims or the ultimate security of future installments, yet intelligible statistics would go far to correct the evils of lax administration and inadequate benefits by sheer education of public opinion. Statistics also are indispensable to effective accident prevention and to the

[10]Again there is no statistical record and the statements in the text are based upon personal observation in several states. See, however, the Connor Reports to the Governor of New York, 1919.

best results in the rehabilitation of injured workmen. The primary requirements are well known: a clear presentation of work injuries by industry, occupation, cause, severity, wage loss and compensation cost, and analyses of claim settlements with respect to promptness, cost of litigation, grounds upon which compensation was refused or suspended, measures taken to counteract the inevitable efforts of employers and insurance carriers to evade their statutory obligations. Standard schemes of classification and tabulation designed to present these and kindered facts have been prepared galore.[11] Therein, however, a deal of pains has gone for naught. Most of the administrative boards do publish some sort of annual or biennial report but no two are on the same basis, few, if any, give a satisfactory analysis either of work injuries or of claim settlement, and no one has attempted to digest and correlate the reports of the several states. It is impossible at this late date to obtain any accurate estimate of the annual number of fatal accidents in American industries or to make more than a rough conjecture as to the number and severity distribution of non-fatal work injuries. Any attempt to compare accident severity rates of different industries, different states, or different years is altogether futile. The most disheartening feature of the case is the total want of intelligent interest in such information.

If this survey of Workmen's Compensation in the United States is mainly a recital of shortcomings, the reason is that attention to defects conduces to improvement more than a song of praise. Ours was the last of the industrial nations to attack the problem of work injuries. A decade since, the immediate desideratum was to obtain some relief from the iniquities of the common law. Today the problem is to broaden the scope of our compensation acts, increase the benefits, and improve the administration. To one who has been associated with compensation as student or administrator for more than a dozen years, the progress already made augurs well for the future. Benefits are still miserably inadequate but they are being slowly increased by successive amendments to existing laws. Even in administration there is some evidence of improvement, at least in the more progressive states. A decade hence, we may reasonably hope, American industry will bear, if not the whole, at least the major part of the pecuniary cost of work injuries.

[11]See successive reports of the Committee on Statistics of the International Association of Industrial Accident Boards and Commissions.